

Statutory Firearms Restrictions in Domestic Violence Cases

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9.1 Chapter Overview

Under Const 1963, art 1, §6, “[e]very person has a right to keep and bear arms for the defense of himself and the state.” However, the state may impose valid restrictions on the right to purchase or possess a firearm. See *People v Smelter*, 175 Mich App 153, 155 (1989) (“The right to regulate weapons extends not only to the establishment of conditions under which weapons may be possessed, but allows the state to prohibit weapons whose customary employment by individuals is to violate the law.”) and *Kampf v Kampf*, 237 Mich App 377, 383 (1999) (“[T]he Michigan Constitution does not protect the right to bear arms in the context of sport or recreation.”).

Note: The Second Amendment to the U.S. Constitution does not apply to the states. *People v Swint*, 225 Mich App 353, 359-360 (1997), citing *Miller v Texas*, 153 US 535, 538 (1894). Moreover, federal cases interpreting the Second Amendment offer little guidance in construing Const 1963, art 1, §6 because of the textual differences between the Second Amendment and the corresponding Michigan provision. (The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”) On the authority of the U.S. Congress to regulate firearms, see *United States v Napier*, 233 F3d 394, 403 (CA 6, 2000) and *United States v Warin*, 530 F2d 103, 107 (CA 6, 1976), holding that the Second Amendment creates no individual right, and that legislative restrictions on the use of firearms do not impinge on any constitutionally protected liberties.

This chapter addresses federal and state statutory firearms restrictions that apply to individuals who are subject to the following criminal proceedings or court orders:

*This chapter focuses on the circumstances that are likely to arise in cases involving domestic violence. Firearms disabilities may also arise from other circumstances beyond the scope of this discussion, such as mental illness, controlled substance addiction, or dishonorable discharge from the armed services.

- F Indictment on felony or misdemeanor charges.
- F Conviction of a felony.
- F Conviction of a misdemeanor.
- F Pretrial conditional release orders and probation orders issued in criminal cases for the protection of a named person.
- F Personal protection orders.*

Additionally, this chapter addresses Michigan firearms restrictions that apply to individuals who are otherwise deemed dangerous to themselves or others.

Under federal and Michigan statutes, individuals subject to the foregoing proceedings or orders may face four types of restrictions on access to firearms:

- F **Prohibition from purchasing or possessing any firearms.** Federal law prohibitions arise upon conviction of any felony or a misdemeanor domestic violence crime, and upon entry of certain orders for conditional pretrial release, probation, or personal protection. State law prohibitions arise upon conviction of certain felonies.
- F **Prohibition from obtaining a license to purchase, carry, or transport a pistol (hereinafter a “pistol license”).** This prohibition arises under state law only. It applies to individuals who are subject to: a felony indictment; a felony conviction; a pretrial conditional release order issued for the protection of a named person; or, a personal protection order. It may also apply to persons deemed a threat to themselves or others.
- F **Prohibition from obtaining a license to carry a concealed pistol (hereinafter a “concealed pistol license”).** This prohibition arises under state law only. It applies to individuals who are subject to: a felony indictment; a felony or misdemeanor conviction; a pretrial conditional release order issued for the protection of a named person; or, a personal protection order. It may also apply to persons deemed dangerous to themselves or others.
- F **Suspension or revocation of an existing concealed pistol license.** A concealed pistol license may be suspended under state law if its holder is charged with a felony or misdemeanor. A concealed pistol license may be revoked if its holder becomes ineligible to obtain a license.

The rest of this chapter will describe the foregoing restrictions in more detail. The reader will also find a brief review of Michigan statutory provisions governing the seizure and forfeiture of firearms used in violation of the law.

9.2 Definitions

For purposes of this chapter, the federal and state definitions of “firearms” should be noted. For purposes of the federal provisions discussed in this chapter, a “firearm” is:

“(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.* Such term does not include an antique firearm.” 18 USC 921(a)(3).

*The term “destructive device” includes such things as bombs, grenades, or mines. See 18 USC 921(a)(4).

The Michigan statutes define a “firearm” as:

“a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air. Firearm does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling by a spring, or by gas or air, BB’s not exceeding .177 caliber.” MCL 28.421(a); MSA 28.91(a) and MCL 750.222(b); MSA 28.419(b).

The Michigan statutes also define a “pistol” as:

“a loaded or unloaded firearm that is 30 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals it as a firearm.” MCL 28.421(b); MSA 28.91(b) and MCL 750.222(c); MSA 28.419(c).

9.3 Effect of Federal Firearms Provisions on State Law

The federal firearms statutes do not preempt Michigan law governing firearms to the extent that Michigan law is consistent with the federal statutes. 18 USC 927 provides:

“No provision of [18 USC 921 et seq, governing firearms restrictions] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.”

For a case construing this statute, see *United States v Friday*, 404 F Supp 1343, 1345 (ED Mich, 1975) (“If the congressional scheme conflicts with certain provisions of a state system, Congress has deemed the conflicting state provision pro tanto inadequate by providing that the federal law controls.”) For a general discussion of the federal preemption doctrine, see *People v Hegedus*, 432 Mich 598 (1989).

9.4 Michigan Restrictions That Apply Upon Indictment on Felony or Misdemeanor Charges

A. Restrictions Applicable to License Applicants Upon Felony Indictment

An indictment on felony charges gives rise to two firearms restrictions under Michigan law:

- F The person under indictment may not obtain a license to purchase, carry, or transport a pistol (a “pistol license”). MCL 28.422(3)(d); MSA 28.92(3)(d).
- F The person under indictment may not obtain a license to carry a concealed pistol (a “concealed pistol license”). MCL 28.425b(7)(f); MSA 28.92(25b)(7)(f).

B. Restrictions Applicable to Concealed Pistol License Holders Upon Felony or Misdemeanor Indictment

1. Notice to Concealed Weapon Licensing Board

MCL 28.425m; MSA 28.92(25m) requires the prosecuting attorney to promptly notify the issuing county concealed weapon licensing board of a criminal charge against a license holder “for a felony or specified criminal offense as defined in this act.” The prosecuting attorney must also promptly notify the issuing board of the disposition of the criminal charge. If the license holder was convicted of a crime, this notice must indicate if the crime involved “the brandishing or use of a pistol, if the pistol was carried by the license holder during the commission of the crime, or if no pistol was carried by the license holder during the commission of the crime.”

The applicable definitions provided in MCL 28.421; MSA 28.91 do not include the term “specified criminal offense” as used in MCL 28.425m; MSA 28.92(25m). See Section 9.6(B) for the definition of “misdemeanor.” Any misdemeanor conviction in Michigan or elsewhere will disqualify an applicant from obtaining a concealed pistol license if it occurred in the three years immediately preceding the date of application. MCL 28.425b(7)(i); MSA 28.92(25b)(7)(i). Additionally, certain misdemeanors listed in MCL 28.425b(7)(h); MSA 28.92(25b)(7)(h) will disqualify an applicant from obtaining a concealed pistol license if the conviction occurred in the eight years immediately preceding the date of application. For more information about these provisions, see Section 9.6(B).

2. Suspension of License

MCL 28.428(3); MSA 28.96(3) provides for the immediate suspension of a concealed pistol license held by a person charged with a felony or misdemeanor crime, as follows:

“If the concealed weapon licensing board is notified by a law enforcement agency or prosecuting official that an individual licensed to carry a concealed pistol is charged with a felony or misdemeanor as defined in this act, the concealed weapon licensing board shall immediately suspend the individual's license until there is a final disposition of the charge for that offense and send notice of that suspension to the individual's last known address as indicated in the records of the concealed weapon licensing board. The notice shall inform the individual that he or she is entitled to a prompt hearing on the suspension, and the concealed weapon licensing board shall conduct a prompt hearing if requested in writing by the individual.”

It is not clear whether criminal contempt charges for a PPO violation are encompassed by this provision. See Section 9.6(B) for the definition of “misdemeanor” under MCL 28.428(3); MSA 28.96(3), and Section 8.9(A) for a general discussion of whether criminal contempt constitutes a “misdemeanor.”

The concealed weapon licensing board may revoke a license if it determines that an individual is ineligible to receive a license. MCL 28.428(1); MSA 28.96(1). The statute further provides for LEIN entry of an order suspending or revoking a license, as follows:

“If the concealed weapon licensing board orders a license suspended or revoked under this section or amends a suspension or revocation order, the concealed weapon licensing board shall immediately notify a law enforcement agency having jurisdiction in the county in which the concealed weapon licensing board is located to enter the order or amended order into the law enforcement information network. A law enforcement agency that receives notice of an order or amended order under this subsection from a concealed weapon licensing board shall immediately enter the order or amended order into the law enforcement information network as requested by that concealed weapon licensing board.” MCL 28.428(5); MSA 28.96(5).

C. Exemptions from Licensing Restrictions

The foregoing licensing restrictions do not apply to certain government employees acting in the course of their employment:*

- F The pistol licensing statute does not apply to any police, corrections, or military agency, or any of its members while engaged in the course of their duties with the agency, or while going to and from those duties. MCL 28.432; MSA 28.98.
- F The requirements for obtaining a license to carry a concealed pistol do not apply to employees of police agencies, constables certified under MCL 28.601 et seq.; MSA 4.450(1) et seq.,* and employees of corrections or military agencies, with respect to the performance of their duties. MCL 28.432a; MSA 28.98(1).

*The person indicted may be subject to other restrictions imposed by his or her employer, however.

*The concealed pistol statute is applicable to township constables.

D. Criminal Liability for Violation of Licensing Restrictions

An order suspending or revoking a concealed pistol license (or an amended order) is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of it. MCL 28.428(6); MSA 28.96(6). If an individual is carrying a pistol in violation of a suspension or revocation order, but has not previously received notice of it, the individual shall be informed of the order and be given an opportunity to properly store the pistol or otherwise comply with the order before an arrest is made a violation. MCL 28.428(7); MSA 28.96(7). A law enforcement officer who notifies an individual of a suspension or revocation

order in this situation shall enter a statement into the LEIN network that the individual has received notice of the order. MCL 28.428(8); MSA 28.96(8).

Obtaining a pistol in violation of the pistol licensing statute is a misdemeanor punishable by 90 days in jail or a maximum \$100 fine. MCL 750.232a(1); MSA 28.429(1)(1). Carrying a concealed pistol without a license is a felony punishable by a maximum five years imprisonment or a maximum \$2500 fine. MCL 750.227(3); MSA 28.424(3). See also MCL 750.223(3)(a); MSA 28.420(3)(a), which makes it a felony to sell a firearm or ammunition to a person under indictment for a felony punishable by imprisonment for four years or more.

Federal criminal penalties are also imposed on those who sell firearms or ammunition to persons under indictment for crimes punishable by more than one year's imprisonment. See 18 USC 922(d)(1) and 18 USC 924(a)(2) (imposing a fine and/or a maximum ten-year prison term for violations). Crimes punishable by more than a year's imprisonment do not include antitrust or similar offenses related to the regulation of business practices, or state 2-year misdemeanors. 18 USC 921(a)(20).

9.5 Restrictions Arising from Conviction of a Felony

Both federal and Michigan law restrict the purchase or possession of firearms by individuals convicted of felony offenses. Additionally, licensing restrictions arise under Michigan law.

A. Federal Restrictions on the Purchase or Possession of Firearms or Ammunition by Convicted Felons

Persons convicted of a crime punishable by imprisonment for a term exceeding one year may not purchase or possess firearms or ammunition under the federal firearm statutes. 18 USC 922(g)(1) provides:

“(g) It shall be unlawful for any person —

“(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year...

“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

18 USC 921(a)(20) contains the definitions for the terms used in the above provision. It provides that a “crime punishable by imprisonment for a term exceeding one year” does not include a state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. The statute also excludes antitrust or similar offenses related to the regulation of business practices.

What constitutes a “conviction” for purposes of 18 USC 922(g)(1) is to be determined in accordance with the law of the jurisdiction where the conviction was entered. Additionally, “[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” 18 USC 921(a)(20). Any restoration of civil rights after a conviction must take place according to the law of the jurisdiction where the conviction was entered. *Beecham v United States*, 511 US 368, 371 (1994).

Note: In Michigan, convictions are set aside under MCL 780.621; MSA 28.1274(101). For purposes of the federal prohibition on firearms possession, a convicted felon’s civil rights are restored in Michigan upon completion of sentence. *Hampton v United States*, 191 F3d 695 (CA 6, 1999) (petitioner charged with violating 18 USC 922(g)(1) had no felony “conviction” as defined in 18 USC 921(a)(20) because his civil rights were restored upon completion of his sentence for the predicate offense). However, a convicted felon’s right to purchase or possess firearms is also restricted by MCL 750.224f; MSA 28.421(6), which is discussed at Section 9.5(B). In *Hampton v United States*, *supra*, this statute did not restrict the convicted felon’s ability to possess a firearm because its restriction period had expired. However, in *United States v Williams*, 134 F Supp 2d 851 (ED Mich, 2001), a convicted felon who failed to comply with the restrictions imposed by MCL 750.224f; MSA 28.421(6) was subject to the federal prosecution for firearms possession, even though he had completed his sentence and his civil rights were otherwise restored under Michigan law.

The penalty for violating 18 USC 922(g)(1) is a fine and/or a maximum ten year prison term. 18 USC 924(a)(2).

Exemptions from the foregoing restrictions are available for government personnel under 18 USC 925(a)(1):

“The provisions of this chapter...shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.”

Relief from disabilities imposed under 18 USC 922(g)(1) is available upon application to the Secretary of the Treasury. The Secretary may grant relief “if it is established...that that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” 18 USC 925(c).

*Crimes punishable by more than one year in prison do not include antitrust or similar offenses related to the regulation of business practices, or state two-year misdemeanors. 18 USC 921(a)(20).

In addition to the forgoing restrictions, federal law forbids the sale of firearms or ammunition to a person who has been convicted of a crime punishable by more than one year in prison.* See 18 USC 922(d)(1) and 18 USC 924(a)(2) (imposing a fine and/or a maximum ten-year prison term for violations).

B. Michigan Restrictions on the Purchase or Possession of Firearms by Convicted Felons

If a felony conviction was for an offense punishable by imprisonment for four years or more, the person convicted may not possess, use, transport, sell, purchase, carry, ship, receive, or distribute firearms in Michigan until certain conditions are fulfilled. MCL 750.224f(1) and (5); MSA 28.421(6)(1) and (5). Violation of this statute is a felony punishable by a maximum five years imprisonment and/or a maximum \$5000 fine. MCL 750.224f(3); MSA 28.421(6)(3).

MCL 750.224f(1)-(2); MSA 28.421(6)(1)-(2) provides for expiration of the foregoing restrictions at a given time after all of the following conditions are met:

- F Payment of all fines resulting from the violation;
- F Completion of all imprisonment imposed for the violation; and,
- F Successful completion of all conditions of probation or parole imposed for the violation.

For all but certain “specified felonies” covered by the statute, the firearms prohibition expires three years after the foregoing conditions are met. For “specified felonies,” however, the prohibition expires five years after these conditions are met. Additionally, a person convicted of a “specified felony” must make application to the concealed weapon licensing board under MCL 28.424; MSA 28.92(3). “Specified felonies” are felonies in which one or more of the following circumstances exist:

“(i) An element of that felony is the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

“(ii) An element of that felony is the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of a controlled substance.

“(iii) An element of that felony is the unlawful possession or distribution of a firearm.

“(iv) An element of that felony is the unlawful use of an explosive.

“(v) The felony is burglary of an occupied dwelling, or breaking and entering an occupied dwelling, or arson.” MCL 750.224f(6); MSA 28.421(6)(6).

Government employees (e.g., law enforcement officers) are *not* exempt from the restrictions imposed on convicted felons under MCL 750.224f; MSA 28.421(6). See MCL 750.231; MSA 28.428.

A person selling a firearm or ammunition to anyone who may not purchase or possess a firearm under MCL 750.224f; MSA 28.421(6) is subject to felony sanctions. MCL 750.223(3)-(4); MSA 28.420(3)-(4).

The Michigan Court of Appeals has rejected an ex post facto challenge to MCL 750.224f; MSA 28.421(6), which makes it a crime for a convicted felon to possess a firearm. See *People v Tice*, 220 Mich App 47 (1996).

Note: MCL 750.224f; MSA 28.421(6) does not apply to “a conviction that has been expunged or set aside, or for which the person has been pardoned, unless the expunction, order, or pardon expressly provides that the person shall not possess a firearm.” MCL 750.224f(4); MSA 28.421(6)(4). Michigan convictions may be set aside under MCL 780.621; MSA 28.1274(101).*

*For discussion of this statute, see Miller, Crime Victim Rights Manual, Section 3.2 (MJJ, 2001).

C. Michigan Licensing Restrictions for Convicted Felons

Conviction of a felony in Michigan or elsewhere disqualifies an individual from obtaining a license to carry a concealed pistol. MCL 28.425b(7)(f); MSA 28.92(25b)(7)(f). Additionally, felons subject to the restrictions on purchasing or possessing a firearm imposed by MCL 750.224f; MSA 28.421(6)* may not obtain a license to purchase, carry, or transport a pistol, MCL 28.422(3)(e); MSA 28.92(3)(e). Felons subject to MCL 750.224f; MSA 28.421(6) are additionally prohibited from obtaining a concealed pistol license under MCL 28.425b(7)(e); MSA 28.92(25b)(7)(e).

*MCL 750.224f; MSA 28.421(6) is discussed in Section 9.5(B).

MCL 28.425b(16)(a); MSA 28.92(25b)(16)(a) defines “conviction” as “a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.”

MCL 28.425b(16)(b); MSA 28.92(25b)(16)(b) defines “felony” with reference to MCL 761.1; MSA 28.843, or as “a violation of a law of the United States or another state that is designated as a felony or that is punishable by death or by imprisonment for more than 1 year.” MCL 761.1; MSA 28.843 defines a “felony” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.”

*The employee may be subject to other restrictions imposed by his or her employer, however.

*The concealed pistol statute is applicable to township constables.

The foregoing restrictions do not apply to certain government employees acting in the course of their employment:*

- F The pistol licensing statute does not apply to any police, corrections, or military agency, or any of its members while engaged in the course of their duties with the agency, or while going to and from those duties. MCL 28.432; MSA 28.98.
- F The requirements for obtaining a license to carry a concealed pistol do not apply to employees of police agencies, constables certified under MCL 28.601 et seq.; MSA 4.450(1) et seq.,* and employees of corrections or military agencies, with respect to the performance of their duties. MCL 28.432a; MSA 28.98(1).

Obtaining a pistol in violation of the pistol licensing statute is a misdemeanor punishable by 90 days in jail or a maximum \$100 fine. MCL 750.232a(1); MSA 28.429(1)(1). Carrying a concealed pistol without a license is a felony punishable by a maximum five years imprisonment or a maximum \$2500 fine. MCL 750.227(3); MSA 28.424(3).

See Section 9.4 regarding license suspension and revocation for concealed pistol license holders who are charged and convicted of a felony.

Upon entry of a conviction of a felony resulting in a prohibition against using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm under MCL 28.425b; MSA 92(25b), the Department of State Police shall immediately enter the conviction into the law enforcement information network. MCL 28.425b(8); MSA 92(25b)(8).

9.6 Restrictions Upon Conviction of a Misdemeanor

A. Federal Restrictions for Domestic Violence Misdemeanors

Effective September 30, 1996, the federal Omnibus Consolidated Appropriations Act of 1997 imposes firearms restrictions on anyone who has been convicted of a misdemeanor domestic violence crime. 18 USC 922(g)(9) prohibits such persons from purchasing or possessing a firearm, as follows:

“(g) It shall be unlawful for any person ...

“(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

The penalty for violating this statute is a fine and/or a maximum ten year prison term. 18 USC 924(a)(2).

The foregoing restrictions result from all domestic violence misdemeanor convictions, even those that occurred prior to the September 30, 1996 effective date of the federal statute. The restrictions apply to both handguns and long guns. **There are no exemptions from these restrictions for government (e.g., law enforcement) personnel.** See 18 USC 925(a)(1).*

18 USC 921(a)(33) defines a “misdemeanor crime of domestic violence” as follows:

“(A) [T]he term ‘misdemeanor crime of domestic violence’ means an offense that —

“(i) is a misdemeanor under Federal or State law; and

“(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

“(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter unless —

“(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

“(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

“(aa) the case was tried by a jury, or

“(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

“(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

For purposes of 18 USC 921(a)(33)(B)(ii) restoration of civil rights after a conviction must take place according to the law of the jurisdiction where the conviction was entered. See *Beecham v United States*, 511 US 368, 371 (1994).

Applying Michigan principles governing the restoration of civil rights, the U.S. District Court for the Western District of Michigan has held that “Michigan law excludes persons who commit misdemeanor crimes of domestic violence from prosecution under [18 USC 922(g)(9)].” *United States v Wegrzyn*, 106 F Supp 2d 959, 960 (WD Mich, 2000). The district court reasoned that a misdemeanant convicted of domestic violence loses the right to vote upon conviction, pursuant to MCL 168.758b; MSA 6.1758(2). This statute takes away a misdemeanant’s right to vote “while confined”; however, upon release from custody, this civil right is automatically restored.

*A federal appeals court has rejected constitutional challenges to the exemptions in 18 USC 925 based on the equal protection provisions of the Fifth Amendment. *Fraternal Order of Police v U.S.*, 173 F3d 898 (CA DC, 1999).

*For discussion of this statute, see Miller, Crime Victim Rights Manual, Section 3.2 (MJI, 2001).

Thus, upon release from custody, a Michigan domestic violence misdemeanor has “had civil rights restored” as provided in 18 USC 921(a)(33)(B)(ii), and cannot be considered to be “convicted” for purposes of prosecution under 18 USC 922(g)(9). 106 F Supp 2d at 961-962, citing *Hampton v United States*, 191 F3d 695, 702-703 (CA 6, 1999). The court in *Wegrzyn* extended this reasoning to a domestic violence misdemeanor who had not been sentenced to time in jail, holding that “under such circumstances the requirement...that civil rights be lost and restored is satisfied.” 106 F Supp 2d at 964.

Michigan convictions may be set aside under MCL 780.621; MSA 28.1274(101).*

18 USC 922(g)(9) has withstood constitutional challenge on various grounds, as the following cases illustrate:

- F *United States v Lewis*, 236 F3d 948 (CA 8, 2001) (Rejecting challenges based on the Commerce Clause, the equal protection provisions of the Fifth Amendment, and the Second and Eighth Amendments).
- F *United States v Beavers*, 206 F3d 706 (CA 6, 2000), cert den 529 US 1121 (2000) (The statute does not violate Fifth Amendment due process rights by failing to require the government to prove as an element of the offense the defendant’s knowledge that possession of firearms was illegal).
- F *Fraternal Order of Police v United States*, 173 F3d 989 (CA DC, 1999) (Rejecting challenges based on the Commerce Clause, and the Second and Tenth Amendments).
- F *United States v Meade*, 175 F3d 215 (CA 1, 1999) (Rejecting challenges based on the Tenth Amendment and the Due Process Clause).
- F *United States v Smith*, 171 F3d 617 (CA 8, 1999) (Rejecting assertions that the statute was unconstitutionally vague, and that it violated the Second Amendment and the equal protection provisions of the Fifth Amendment).
- F *United States v Thomson*, 134 F Supp 2d 1227 (D Utah, 2001) (Rejecting challenges based on the Ex Post Facto Clause and vagueness).
- F *National Ass’n of Government Employees v Barrett*, 968 F Supp 1564 (ND Ga, 1997) (Rejecting assertions that the statute violated the federal Commerce Clause, the Equal Protection Clause, the Due Process Clause, the Ex Post Facto Clause, the Bill of Attainder Clause, and the Tenth Amendment).

Several federal courts have held that the predicate “domestic violence misdemeanor” giving rise to the prohibitions of 18 USC 922(g)(9) need not have as an element the existence of a domestic relationship between the perpetrator and victim. *United States v Smith*, *supra*, 171 F3d at 620; *United States v Meade*, *supra*, 175 F3d at 219; *United States v Thomson*, *supra*, 134 F Supp 2d at 1230.

Relief from the restrictions imposed under 18 USC 922(g)(9) is available upon application to the Secretary of the Treasury. The Secretary may grant relief “if it is established...that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” 18 USC 925(c).

In addition to the foregoing restrictions, federal law forbids the sale or other disposal of firearms or ammunition to a person with knowledge or reasonable cause to believe that the person has been convicted of a domestic violence misdemeanor crime. See 18 USC 922(d)(9), and 18 USC 924(a)(2)(imposing a fine and/or a maximum ten-year prison term for violation of this prohibition).

B. Michigan Restrictions Following a Misdemeanor Conviction

Effective July 1, 2001, restrictions on the ability to obtain a concealed pistol license arise from conviction of a misdemeanor. MCL 28.425b(7)(i); MSA 28.92(25b)(7)(i) disqualifies applicants who have been convicted of any misdemeanor in Michigan or elsewhere in the three years immediately preceding the date of application. An applicant is also ineligible to obtain a concealed pistol license if he or she has been convicted of certain specified misdemeanors in the eight years immediately preceding the date of application. These misdemeanors include domestic assault, aggravated domestic assault, stalking, and various firearms offenses; they are listed in MCL 28.425b(7)(h); MSA 28.92(25b)(7)(h) as follows:

- F Drunk driving, second offense, punishable as provided in MCL 257.625(8)(b); MSA 9.2325(8)(b).
- F Reckless driving, MCL 257.626; MSA 9.2326.
- F Driving while license suspended or revoked, punishable as a second or subsequent offense under MCL 257.904; MSA 9.2604.
- F Hindering or obstructing weights and measures enforcement officer, MCL 290.629; MSA 12.1081(29).
- F Hindering, obstructing, assaulting, or committing bodily injury upon director or authorized representative under the motor fuels quality act, MCL 290.650; MSA 13.139(50).
- F Knowingly or intentionally possessing a controlled substance, MCL 333.7403; MSA 14.15(7403).
- F Displaying sexually explicit materials to minors, MCL 722.677; MSA 25.254(7).
- F Assault or domestic assault, MCL 750.81; MSA 28.276.
- F Aggravated assault or aggravated domestic assault, MCL 750.81a; MSA 28.276(1).
- F Fourth degree child abuse, MCL 750.136b; MSA 28.331(2).
- F Accosting, enticing, or soliciting a child for immoral purposes, MCL 750.145a; MSA 28.341.

- F Vulnerable adult abuse, MCL 750.145n; MSA 28.342A(n).
- F Solicitation to commit a felony, MCL 750.157b(3)(b); MSA 28.354(2)(3)(b).
- F Impersonating a sheriff, conservation officer, coroner, constable, or police officer, MCL 750.215; MSA 28.412.
- F Illegal sale of a firearm or ammunition, MCL 750.223; MSA 28.420.
- F Illegal sale of a self-defense spray, MCL 750.224d; MSA 28.421(4).
- F Sale or possession of a switchblade, MCL 750.226a; MSA 28.423(1).
- F Improper transportation of a firearm, MCL 750.227c; MSA 28.424(3).
- F Failure to have a pistol inspected, MCL 750.228; MSA 28.425.
- F Accepting a pistol in pawn, MCL 750.229; MSA 28.426.
- F Failure to register the purchase of a firearm or a firearm component, MCL 750.232; MSA 28.429.
- F Improperly obtaining a pistol, making a false statement on an application to purchase a pistol, or using false identification to purchase a pistol, MCL 750.232a; MSA 28.429(1).
- F Intentionally aiming a firearm without malice, MCL 750.233; MSA 28.430.
- F Intentionally discharging a firearm aimed without malice, MCL 750.234; MSA 28.431.
- F Possessing a firearm on prohibited premises, MCL 750.234d; MSA 28.431(4).
- F Brandishing a firearm in public, MCL 750.234e; MSA 28.431(5).
- F Possession of a firearm by an individual less than 18 years of age, MCL 750.234f; MSA 28.431(6).
- F Intentionally discharging a firearm aimed without malice causing injury, MCL 750.235; MSA 28.432.
- F Parent of a minor who possessed a firearm in a weapon free school zone, MCL 750.235a; MSA 28.432(1).
- F Setting a spring gun or other device, MCL 750.236; MSA 28.433.
- F Possessing a firearm while under the influence of intoxicating liquor or a drug, MCL 750.237; MSA 28.434.
- F Weapon free school zone violation, MCL 750.237a; MSA 28.434(1).
- F Stalking, MCL 750.411h; MSA 28.643(8).
- F Reckless, careless, or negligent use of a firearm resulting in injury or death, MCL 752.861; MSA 28.436(21).
- F Careless, reckless, or negligent use of a firearm resulting in property damage, MCL 752.862; MSA 18.436(22).
- F Reckless discharge of a firearm, MCL 752.863a; MSA 28.436(24).
- F A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described above.

MCL 28.425b(16)(a); MSA 28.92(25b)(16)(a) defines “conviction” as “a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.”

MCL 28.425b(16)(d); MSA 28.92(25b)(16)(d) defines “misdemeanor” as “a violation of a penal law of this state or violation of a local ordinance substantially corresponding to a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine, or both.” It is not clear whether a criminal contempt conviction for a PPO violation is encompassed by this provision. See Section 8.9(A) for a general discussion of whether criminal contempt constitutes a “misdemeanor.”

Upon entry of a conviction of a misdemeanor resulting in a prohibition against using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm under MCL 28.425b; MSA 92(25b), the Department of State Police shall immediately enter the conviction into the law enforcement information network. MCL 28.425b(8); MSA 92(25b)(8).

See Section 9.4(B) regarding license suspension and revocation for concealed pistol license holders who are charged and convicted of a misdemeanor.

The requirements for obtaining a license to carry a concealed pistol do not apply to employees of police agencies, constables certified under MCL 28.601 et seq.; MSA 4.450(1) et seq.,* and employees of corrections or military agencies, with respect to the performance of their duties. MCL 28.432a; MSA 28.98(1).

*The concealed pistol statute is applicable to township constables.

9.7 Restrictions Arising from Entry of a Court Order

A personal protection order, pretrial conditional release order, or probation order may by its terms prohibit an individual from purchasing or possessing a firearm or ammunition. In addition to such court-ordered prohibitions, certain statutory restrictions arise from the entry of such orders. If a PPO, conditional release order, or probation order restrains an individual from abusing his or her intimate partner, a federal statute prohibits the individual from purchasing or possessing firearms or ammunition, even if the court order is silent on this issue. Under Michigan law, PPOs and conditional release orders protecting a named person give rise to licensing restrictions.

Note: The discussion in this section does not apply to government employees who must carry a firearm as a condition of employment, such as law enforcement or corrections officers. Court orders restraining these individuals from purchasing or possessing firearms are the subject of Section 9.8.

A. Federal Restrictions on Purchase or Possession of Firearms or Ammunition After Entry of a Court Order

Under 18 USC 922(g)(8), persons who are subject to court orders restraining them from abusing an intimate partner may not purchase or possess firearms or ammunition. The statute provides:

“It shall be unlawful for any person...

“(8) who is subject to a court order that —

“(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

“(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

“(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

“(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury...

“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

The penalty for violating this statute is a fine and/or a maximum ten year prison term. 18 USC 924(a)(2).

18 USC 921(a)(32) defines “intimate partner” as follows:

“The term ‘intimate partner’ means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is the parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.”

18 USC 922(g)(8) has been subject to constitutional challenge on various grounds. The following cases illustrate:

- F *United States v Napier*, 233 F3d 394 (CA 6, 2000) (Rejected due process challenges to the statute based on assertions that it does not require notice of its prohibitions. This case also rejected challenges based on the Commerce Clause and the Second Amendment).
- F *United States v Kafka*, 222 F3d 1129 (CA 9, 2000) (Conviction under the statute did not violate due process rights, even though the defendant did not know that his possession of a firearm violated the statute).
- F *United States v Baker*, 197 F3d 211 (CA 6, 1999) (Rejected assertions that the statute violates the Commerce Clause and the equal protection guarantees of the Fifth Amendment. This case also held that the statute does not violate due process because it lacks a requirement that a defendant receive direct notice of the statutory firearms disability after issuance of the protection order. Finally, the case held that prosecution

under the statute does not constitute cruel and unusual punishment under the Eighth Amendment).

- F *United States v Emerson*, 46 F Supp 2d 598 (ND Texas, 1999) (Holding that the statute violated the Second Amendment, as well as the Fifth Amendment's due process guarantees. The court found a due process violation in the fact that the defendant was subject to prosecution without proof that he knew he was violating the statute by possessing a firearm. This case rejected challenges to the statute based on the Commerce Clause and the Tenth Amendment).
- F *United States v Spruill*, 61 F Supp 2d 587 (WD Texas, 1999) (Declining to follow the reasoning in *United States v Emerson*, *supra*, this case held that the statute did not violate the Second Amendment or the due process guarantees of the Fifth Amendment).

Michigan PPOs and conditional pretrial release orders for protection of a named person under MCL 765.6b; MSA 28.893(2) are likely to meet the criteria set forth in 18 USC 922(g)(8). The federal statute may also apply to probation orders issued under MCL 771.3(2)(o); MSA 28.1133(2)(o), which authorizes the issuance of probation orders with "conditions reasonably necessary for the protection of 1 or more named persons." For discussion of the standard for issuing a domestic relationship PPO, see Section 6.3. For discussion of conditional release orders issued for protection of a named individual in a criminal proceeding, see Sections 4.4 and 4.6. Probation orders are discussed in Section 4.14(B).

Under the Michigan statutes governing PPOs, conditional release orders, and probation orders, a court has broad discretion with respect to firearms. A court may or may not impose firearms restrictions as it sees fit, or it may tailor firearms restrictions to specific circumstances. For example, a court might prohibit an individual from possessing a pistol in his or her residence, but still permit the individual to possess a hunting rifle at another separate location. It is not clear whether a Michigan order that allows access to firearms under its own terms would nonetheless result in a prohibition against the purchase or possession of all firearms under 18 USC 922(g)(8). On its face, the federal statute forbids the purchase or possession of firearms or ammunition in interstate or foreign commerce by persons "who are subject to a court order," without any deference to the court order's provisions in this regard. See *New Jersey v S.A.*, 675 A2d 678 (NJ Super, 1996), holding that 18 USC 922(g)(8) prohibited return of confiscated firearms to person subject to state domestic violence restraining order. Among the issues to consider in resolving this question are: 1) whether the court order was issued after a hearing, and whether the restrained party had notice and an opportunity to participate as provided in 18 USC 922(g)(8)(A); 2) whether the purchase or possession of firearms or ammunition is "in interstate or foreign commerce"; and, if so, 3) whether the federal statute is preemptive of state law that would permit possession of a firearm under certain circumstances. Federal preemption questions are governed by 18 USC 927, which is quoted at Section 9.3.

Relief from disabilities imposed under 18 USC 922(g)(8) is available upon application to the Secretary of the Treasury. The Secretary may grant relief "if

it is established...that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 USC 925(c).

In addition to the forgoing restrictions, federal law forbids the sale or other disposal of firearms or ammunition to a person with knowledge or reasonable cause to believe that the person is subject to a court order restraining the person from abusing his or her intimate partner. See 18 USC 922(d)(8), and 18 USC 924(a)(2)(imposing a fine and/or a maximum ten-year prison term for violation of this prohibition).

B. Michigan Licensing Restrictions After Entry of a Court Order

The issuance of a Michigan personal protection order or an order for conditional pretrial release under MCL 765.6b; MSA 28.893(2) can result in restrictions on obtaining a license to purchase, carry, or transport a pistol (a "pistol license"), and to carry a concealed pistol (a "concealed pistol license"). These state restrictions do not apply to long guns.

1. Restrictions on Obtaining a License to Purchase, Carry, or Transport a Pistol.

Under MCL 28.422(3)(a); MSA 28.92(3)(a), the following persons are disqualified from obtaining a license to purchase, carry, or transport a pistol:

- F Persons subject to domestic relationship or non-domestic stalking PPOs issued under MCL 600.2950; MSA 27A.2950 and MCL 600.2950a; MSA 27A.2950(1). This restriction applies regardless of whether the parties to the PPO are involved in an intimate relationship.
- F Persons subject to conditional pretrial release orders issued for the protection of a named person under MCL 765.6b; MSA 28.893(2), *if* the order specifies that the defendant may not purchase or possess a firearm.

*See Sections 4.6(A), 6.3(B), and 6.4(C) on court orders with firearms restrictions.

Note: For purposes of pistol licensing, MCL 28.422(3)(a); MSA 28.92(3)(a) appears to make a distinction between PPOs and conditional release orders. The express language of the pistol licensing statute provides for a disability after issuance of a PPO without regard to whether the PPO explicitly addresses firearms. A conditional pretrial release order, on the other hand, must specifically prohibit access to firearms before the licensing disability applies.*

The foregoing orders will not result in the inability to obtain a pistol license unless the restrained individual received notice and an opportunity for a hearing in the court proceeding in which the PPO or conditional release order was issued. Moreover, the pistol license disability will not apply unless the PPO or conditional release order was entered into the LEIN network. MCL 28.422(3)(a); MSA 28.92(3)(a). Accordingly, LEIN entry of an ex parte PPO entered without notice to the respondent will not result in a pistol license disability until the respondent has received notice and an opportunity for a hearing.*

*Compare the concealed pistol licensing restrictions below, which apply even if the restrained party had no notice in the proceeding where the order issued.

Purchasing, possessing, or transporting a pistol without a license is a misdemeanor punishable by 90 days in jail and/or a maximum \$100 fine. MCL 750.232a; MSA 28.429(1).

2. Restrictions on Obtaining a License to Carry a Concealed Pistol

Under MCL 28.425b(7)(d); MSA 28.92(25b)(7)(d), the following persons are disqualified from receiving a license to carry a concealed pistol:

- F Persons subject to domestic relationship and non-domestic stalking PPOs issued under MCL 600.2950; MSA 27A.2950 and MCL 600.2950a; MSA 27A.2950(1). This restriction applies regardless of whether the parties to the PPO are involved in an intimate relationship.
- F Persons subject to conditional pretrial release orders issued under MCL 765.6b; MSA 28.893(2), *if* the order specifies that the defendant may not purchase or possess a firearm.

Note: MCL 28.425b(7)(d); MSA 28.92(25b)(7)(d) appears to make a distinction between PPOs and conditional release orders. The express language of the statute provides for a disability after issuance of a PPO without regard to whether the PPO explicitly addresses firearms. A conditional pretrial release order, on the other hand, must specifically prohibit access to firearms before the licensing disability applies.*

*See Sections 4.6(A), 6.3(B), and 6.4(C) on court orders with firearms restrictions.

The concealed pistol restrictions in MCL 28.425b(7)(d); MSA 28.92(25b)(7)(d) take effect without regard to whether the person subject to the order received notice and an opportunity to be heard in the proceeding at which the order issued. Thus, an ex parte PPO issued without notice to the respondent can result in a concealed pistol disability.*

*Compare the pistol licensing restrictions, which apply only if there was notice and opportunity to be heard when the order issued.

Carrying a concealed pistol without a license is a felony punishable by up to five years in prison or a maximum \$2500 fine. MCL 750.227; MSA 28.424.

3. LEIN Entry; Notice Requirements for Persons Subject to Disqualifying Court Orders

Upon entry of a court order resulting in a prohibition against using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under MCL 28.425b; MSA 92(25b), the Department of State Police shall immediately enter the order into the law enforcement information network. MCL 28.425b(8); MSA 92(25b)(8).

Persons who are subject to a court order that disqualifies them from obtaining a pistol license must receive notice of their disqualification from the Department of State Police upon entry of the order into the LEIN network. MCL 28.422b(1); MSA 28.92(2)(1). The notice shall be sent by first class mail to the last known address of the person, and shall include at least all of the following:

- F The name of the person disqualified.
- F The date of the disqualifying order's entry into LEIN.
- F A statement that the person cannot obtain a license to purchase a pistol or obtain a concealed pistol license until the order or disposition is removed from the LEIN network.
- F A statement that the person may request the State Police to correct or expunge inaccurate information from the LEIN network. Proceedings for correction or expungement are set forth in MCL 28.422b(2)-(5); MSA 28.92(2)(2)-(5).

9.8 Court Orders Prohibiting Law Enforcement Officers from Purchasing or Possessing Firearms

The effect of a PPO or conditional release order on a law enforcement officer's ability to possess a firearm will depend upon whether the order specifically addresses this issue:

- F If the order specifically prohibits the officer from possessing a firearm, the officer is bound by its provisions.**

The statutes governing PPOs and conditional release orders specifically state that a court may prohibit the restrained party from purchasing or possessing firearms or ammunition. These statutes contain no exemptions for law enforcement officers in this regard. See MCL 600.2950(1)(e); MSA 27A.2950(1)(e), MCL 600.2950a(23); MSA 27A. 2950(1)(23), and MCL 765.6b(3); MSA 28.893(2)(3). Although the statute governing conditions in probation orders does not specifically reference firearms restrictions, MCL 771.3(4); MSA 28.1133(4) provides that "[t]he court may impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper." Such conditions could include firearms restrictions; as is the case with PPOs and pretrial release orders, the probation statute provides no exemption from firearms restrictions for law enforcement officers.

Accordingly, courts have discretion under the PPO, conditional release, and probation statutes to restrict an officer's access to all firearms, under all circumstances, or to impose tailored restrictions (e.g., the officer may only possess a firearm while on duty in his or her jurisdiction). The officer must abide by whatever restrictions the court imposes.

Although a law enforcement officer may be prohibited from possessing a firearm by court order, relief from the court's restrictions is available.

Relief from a PPO may be sought by filing a motion to modify or rescind it within 14 days of service. This motion must be heard within five days of filing the motion. MCL 600.2950(14); MSA 27A.2950(14), and MCL 600.2950a(11); MSA 27A.2950(1)(11). Relief from a conditional release order may be sought by a motion to modify it under MCR 6.106(H)(2) (felony cases) or MCL 780.65(1); MSA 28.872(55)(1) (misdemeanor cases). See Section 6.7 on motions to modify a PPO, and Section 4.9 on modification of a conditional release order.

F If a PPO or conditional release order restraining a law enforcement officer does not address the purchase or possession of firearms, the officer will be permitted to carry a firearm in the line of duty.

Law enforcement officers acting in the line of duty are exempt from both federal and Michigan firearms restrictions imposed after entry of a court order. Thus, where the court's order is silent regarding firearms, no statutory disabilities apply with respect to service weapons. With respect to other weapons, however, the restrictions imposed on the general public apply.*

*See Section 9.7 for discussion of these restrictions.

The exemption from the federal restrictions imposed by 18 USC 922(g)(8) provides:

“The provisions of this chapter...shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.” 18 USC 925(a)(1).

For the exemptions from the Michigan pistol and concealed pistol licensing requirements, see MCL 28.432; MSA 28.98 and MCL 28.432a; MSA 28.98(1). These statutes provide exemptions for employees of police, corrections, or military agencies, with respect to weapons used for the purposes of the agency.

9.9 Michigan Restrictions on Concealed Weapons Applicable to Dangerous Individuals

The Michigan pistol licensing and conceal pistol licensing statutes each contain provisions that permit disqualification from licensure for individuals who are deemed dangerous to themselves or others.

The pistol licensing statute, MCL 28.422(3); MSA 28.92(3) provides in pertinent part:

“The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due

speed and diligence issue licenses to purchase, carry, or transport pistols to qualified applicants residing within the city, village, township, or county, as applicable *unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States.* An applicant is qualified if all of [the circumstances listed in the statute] exist.” [Emphasis added.]

The Michigan appellate courts have not decided whether this section’s “probable cause” requirement is in addition to the qualifying circumstances listed in the statute, or whether the qualifying circumstances serve as an exclusive list of factors to consider in determining whether an applicant poses a threat.

MCL 28.425b(7)(o); MSA 28.92(25b)(7)(o) provides for disqualification of an applicant for a concealed pistol license if it is determined that issuing the license is “detrimental to the safety of the applicant or to any other individual.” A determination under this provision shall be based on “clear and convincing evidence of civil infractions, crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions of, or statements of, the applicant that bear directly on the applicant’s ability to carry a concealed pistol.” *Id.*

Suspension of a concealed pistol license is also possible in appropriate circumstances. MCL 28.428(4); MSA 28.96(4) provides:

“If the concealed weapon licensing board determines by clear and convincing evidence based on specific articulable facts that the applicant poses a danger to the applicant or to any other person, the concealed weapon licensing board shall immediately suspend the individual’s license pending a revocation hearing under this section. The concealed weapon licensing board shall send notice of the suspension to the individual’s last known address as indicated in the records of the concealed weapon licensing board. The notice shall inform the individual that he or she is entitled to a prompt hearing on the suspension, and the concealed weapon licensing board shall conduct a prompt hearing if requested in writing by the individual.”

9.10 Seizure and Forfeiture of Firearms Under Michigan Law

Firearms involved in violations of the Michigan statutes discussed in this section may be seized and forfeited to the state. Regarding seizure of weapons after violation of the pistol or concealed pistol licensing statutes, MCL 28.433; MSA 28.99 provides:

“When complaint shall be made on oath to any magistrate authorized to issue warrants in criminal cases that any pistol or other weapon or device mentioned in this act [MCL 28.421 et seq.; MSA 28.91 et seq.] is unlawfully possessed or carried by any person, such magistrate shall, if he be satisfied that there is reasonable cause to believe the matters in said complaint be true, issue his warrant directed to any peace officer, commanding him to search the person

or place described in such complaint, and if such pistol, weapon or device be there found, to seize and hold the same as evidence of a violation of this act [MCL 28.421 et seq.; MSA 28.91 et seq.].”

MCL 750.238; MSA 28.435 contains a substantially similar provision addressing violations of the restrictions on the purchase or possession of firearms by convicted felons found in MCL 750.224f; MSA 28.421(6).

With regard to forfeiture of weapons after violation of the pistol or concealed pistol licensing statutes, see MCL 28.425g; MSA 28.92(25g), which provides:

“A pistol carried in violation of this act [MCL 28.421 et seq.; MSA 28.91 et seq.] is subject to seizure and forfeiture in the same manner that property is subject to seizure and forfeiture under [MCL 600.4701 to 600.4709; MSA 27A.4701 to 27A.4709].”

See also MCL 28.434(1); MSA 28.100(1), providing that:

“all pistols, weapons or devices carried or possessed contrary to this act [MCL 28.421 et seq.; MSA 28.91 et seq.] are declared forfeited to the state, and shall be turned over to the director of the department of state police or his or her designated representative, for disposal under this section.”

Provisions for disposal (including notice requirements) are found at MCL 28.434(2)-(3); MSA 28.100(2)-(3).

MCL 750.239; MSA 28.436 contains a similar provision addressing violations of the restrictions on the purchase or possession of firearms by convicted felons found in MCL 750.224f; MSA 28.421(6).

Note: Firearms used in violation of 19 USC 921 et seq. are subject to seizure and forfeiture under 18 USC 924(d).

*Law enforcement officers acting in the line of duty are exempt from the restrictions on this chart, except where otherwise indicated.

9.11 Chart: Summary of Federal and Michigan Statutory Firearms Restrictions*

Event triggering restriction	Federal restrictions	Michigan restrictions
Felony indictment (Section 9.4)	Person indicted is not disqualified from purchasing or possessing firearms or ammunition, but it is illegal to sell these items to person indicted.	1. Disqualified from obtaining pistol license. 2. Disqualified from obtaining concealed pistol license. Existing C.P. license subject to suspension.
Misdemeanor indictment (Section 9.4)	No federal restrictions.	Existing concealed pistol license subject to suspension. (Note: Applicability of restriction to person charged with criminal contempt is unclear.)
Felony conviction (Section 9.5) (Note: For purposes of the federal statutes, a conviction that was expunged or set aside, or for which a person has had civil rights restored shall not be considered a conviction unless it expressly provides for a firearms restriction.)	Person convicted may not purchase or possess firearms or ammunition.	1. If convicted of felony offense punishable by 4 or more years imprisonment, disqualified from purchasing or possessing firearms until statutory conditions met and disqualification period expires. (No exemption for law enforcement officer.) 2. If subject to above restrictions on purchasing or possessing, may not obtain pistol license. 3. May not obtain concealed pistol license; existing license subject to suspension, revocation.
Misdemeanor conviction (Section 9.6) (Note: For purposes of the federal statutes, a conviction that was expunged or set aside, or for which a person has had civil rights restored shall not be considered a conviction unless it expressly provides for a firearms restriction.)	If domestic violence misdemeanor, person convicted may not purchase or possess firearms or ammunition. (No exemption for law enforcement officer.)	Existing concealed pistol license subject to suspension, revocation. May not obtain a new c.p. license if any conviction within 3 years of application, or if specified conviction within 8 years of application. (Note: Applicability of restriction to criminal contempt conviction is unclear.)

Event triggering restriction	Federal restrictions	Michigan restrictions
Entry of court order against person other than law enforcement officer (PPO or conditional release order for protection of named person under MCL 765.6b; MSA 28.893(2)) (Section 9.7) Law enforcement officer is exempt from both Michigan and federal restrictions, but bound by any specific firearms restrictions imposed in the court's order (Section 9.8)	Person subject to the order may not purchase or possess firearms or ammunition.	<p>1. Disqualified from obtaining pistol license if order is issued after notice to restrained party and entered into LEIN. A conditional release order must also specify a firearms limitation for disqualification to apply.</p> <p>2. Disqualified from obtaining concealed pistol license. A conditional release order must also specify a firearms limitation for disqualification to apply.</p>
Dangerous Individuals (Section 9.9)	No federal provision.	Possible disqualification from obtaining pistol license. Disqualification from obtaining concealed pistol license. C.P. license may be suspended or revoked.

